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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

1 MICKAIL MYLES, an individual,  
2 Plaintiff,

3 v.

4 COUNTY OF SAN DIEGO, by and  
5 through the SAN DIEGO COUNTY  
6 SHISIFF'S DEPARTMENT, a public  
7 entity; and DEPUTY J. BANKS,  
8 an individual,

9 Defendants.

10 Case No. 15-cv-1985-JAH (BLM)

11 **MEMORANDUM OF POINTS  
12 AND AUTHORITIES IN SUPPORT  
13 OF PLAINTIFF'S MOTION FOR  
14 SANCTIONS AND FOR FEES AND  
15 COSTS UNDER 42 U.S.C. §1988  
16 AND CALIFORNIA CIVIL CODE  
17 §52.1(i)**

18 Judge: Hon. John A. Houston  
19 Crtrm: 13B

20 Complaint Filed: September 4, 2015

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1 Plaintiff MICKAIL MYLES submits the following Points and Authorities  
2 in support of his Motion for Fees and Costs.

3 **I. INTRODUCTION**

4 The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988,  
5 as well as California Civil Code §52.1(i) authorizes an award of reasonable  
6 attorney's fees and costs in civil rights litigation. Specifically, section 1988(b)  
7 authorizes the Court to award the prevailing party a reasonable attorney's fee in  
8 any suit to enforce the provisions of 42 U.S.C. §1983, while section 52.1(i)  
9 provides the same to enforce the provisions of section 51.2. As the prevailing  
10 party on all claims brought under these statutes, Mr. Myles brings the instant  
11 motion to recover his attorney's fees and costs pursuant thereto. Plaintiff  
12 separately seeks his entitlement to all his fees and costs reasonably incurred in  
13 the prosecution of his claims submitted to the jury, all of which he prevailed  
14 upon, as sanctions under FRCP 37.

15 The purpose of §§1988 and 52.1(i) is to ensure effective access to the  
16 judicial process for persons with civil rights grievances. The provision and award  
17 of reasonable and compensatory fees encourages the vindication of constitutional  
18 (here, both Federal and State Constitutional rights) and statutory rights. This  
19 purpose is particularly applicable in the case at bar.

20 The incident giving rise to this action occurred on September 5, 2014.  
21 Plaintiff timely filed his government claim on February 26, 2015. Plaintiff timely  
22 filed this civil action on September 4, 2015, just shy of the one-year anniversary  
23 of his abuse at the hands of Defendant Banks and his K-9 partner.

24 Within a month of filing his complaint, Mr. Myles served his discovery  
25 requests, which were appropriately tailored to the claims and causes of action  
26 presented in his complaint. From that date on, as is well documented in Mr.

27 / / /

28 / / /

1 Myles' two motions for sanctions filed on June 16, 2022, and August 15, 2022,<sup>1</sup>  
 2 Defendants, County Counsel, and outside counsel separately retained by  
 3 Defendant County of San Diego (hereinafter "County") engaged in a willful, bad  
 4 faith pattern of obfuscation, deception, suppression, manipulation and evasion<sup>2</sup>,  
 5 costing Mr. Myles precious time, money, effort, physical and emotional hardship  
 6 in the form of continuing depression, anxiety, degradation, exhaustion and  
 7 humiliation, and causing him to question the very justice system he counted on  
 8 as the only acceptable forum to seek to right the wrongs he had suffered.

9 So severe were the discovery abuses inflicted on Mr. Myles that his  
 10 counsel were forced to re-take many depositions, file otherwise unnecessary  
 11 motions, oppose Defendants' motions without the information and documents  
 12 Defendants had in their possession that would assist in Mr. Myles' opposition  
 13 efforts, attempts to locate (on the eve of and during trial) witnesses and  
 14 documents that should have been disclosed six years earlier, and review "on the  
 15 fly" (on the eve of and during trial) a plethora of documents Defendants  
 16 produced only because Mr. Myles learned of them (despite Defendants' efforts to  
 17 conceal them) through his own counsel's internet searches or belatedly from  
 18 Defendants only as a result of pressure brought by Plaintiff's two sanctions  
 19 motions. The very last of these newly produced documents were turned over to  
 20 Mr. Myles on September 12, 2022, the first day of trial, but others remain  
 21 unproduced.

22 This case has been an extraordinary one since the night Mr. Myles was  
 23 brutally beaten and bitten by Defendant Jeremy Banks and his K-9, all while in  
 24 custody, under control, bent over the back of a patrol car, held down by two

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25 <sup>1</sup> Plaintiff incorporates herein by this reference all documents, filings, exhibits  
 26 and declarations filed in support of these motions.

27 <sup>2</sup> This pattern and practice is not limited to this case. See cases before The  
 28 Honorable Marilyn Huff, in *K.J.P., et al. v. County of San Diego/Fischer*, 15-cv-  
 02692-H-MDD, and The Honorable Larry Burns, in *Hartsell v. County of San  
 Diego/Stroh*, 16-cv-1094-LAB-JMA.

1 sheriff's deputies, and handcuffed.<sup>3</sup> Banks' abuse resulted in Myles' physical  
 2 scarring, traumatic brain injury, and PTSD. Moreover, while not a race-based  
 3 discrimination case by the time of trial, both Plaintiff's and Defendants' experts  
 4 agreed that the psychological impact Mr. Myles suffered that night, and will  
 5 suffer for the rest of his life, is compounded by the fact that the four deputies  
 6 involved in the incident were white and Mr. Myles is black, with trauma  
 7 triggered, for example, every time Mr. Myles hears news of racially biased  
 8 policing practices.

9 This case is also extraordinary because of the evidence introduced at trial  
 10 that proved Mr. Myles was only one of many other victims of Defendant Banks'  
 11 uncontrolled outbursts of excessive and unreasonable force, as summarized in  
 12 Plaintiff's Demonstrative Exhibit P464. One of Banks' outbursts even involved  
 13 the in-custody death of hog-tied detainee, Hugo Barragan, whose ear was  
 14 chewed by Banks' K-9.

15 Further evidence of the extraordinary nature of this case is the  
 16 overwhelming evidence introduced at trial of the County's failure to investigate<sup>4</sup>,  
 17 failure to train, and failure to discipline, as well as the County's repeated

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18 <sup>3</sup> Mr. Myles' deposition and trial testimony that he was hit over the head with  
 19 what he believed was a metal object while handcuffed, is similar to Deputy  
 20 Banks' documented use of force on Jessie Alvarez six months later on March 6,  
 21 2015, wherein Banks struck Alvarez on the head with his mace canister while  
 22 handcuffed. The existence of the Alvarez incident and evidence relating to the  
 23 similarity of force used, was hidden from Plaintiff until July 19, 2022. See Trial  
 24 Exhibit 440-4.

25 <sup>4</sup> Ironically, Defendants contended, in its opening statement and closing  
 26 argument, that the County **had** investigated all of Banks' uses of force, pointing  
 27 to the signatures on the UOF Supplements of a sergeant, lieutenant and captain,  
 28 the Barragan homicide investigation, the two CIRB reports re the minor and  
*Alvarez incidents that Defendants allegedly "inadvertently" disclosed, and the IA*  
*investigations in Valdez and Lopez, wrongfully withheld until trial. The ironic*  
*and disingenuous nature of these arguments is remarkable given that the*  
*Defendants never even acknowledged the existence of these CIRBs or IA*  
*investigations and, further, argued against producing all of Banks' UOF*  
*supplements, even the 17 identified in the Eglin cross-exam and trial Exhibit*  
*439, claiming that they were not responsive to Plaintiff's discovery requests for*  
*"investigations into Bank's conduct". See Exhibit A to Dicks Decl., Trial*  
*Transcript October 4, 2022, 4720:19 – 4721:9.*

1 ratification of Defendant Banks' criminal misconduct, at every level, from  
 2 supervising sergeants to Head Sheriff William Gore himself.

3 The extraordinary nature of this case is further evidenced by the Court's  
 4 findings, after Plaintiff's two separate sanctions motions, that the County of San  
 5 Diego (including through both the County Counsel's office and its retained  
 6 outside counsel) willfully and in bad faith suppressed evidence relating to  
 7 Defendant Banks' uses of force and failures to investigate said uses of force. The  
 8 County and its counsel further willfully withheld, in bad faith, the County's  
 9 efforts to surveil Mr. Myles, his father, and his counsel, without ever identifying  
 10 any of these documents in any of its five separate privilege logs, all signed by  
 11 County Counsel Ron Lenert. These unprecedented instances of willful evidence  
 12 suppression spanned a period of seven years – with some of the documents only  
 13 being turned over during trial in this matter, and others which were revealed at  
 14 trial, yet still never produced despite being extremely probative to Plaintiff's  
 15 claims and causes of action against both Defendant Banks and Defendant  
 16 County. See Trial Transcript October 4, 2022 (Exhibit A to Declaration of Joseph  
 17 G. Dicks ("Dicks Decl.") filed herewith), at 4650:17-24 and 4720:19 – 4721:6,  
 18 wherein the Court expressed that it was "appalled" to hear that after two  
 19 sanctions motions against Defendants for suppressing evidence, Plaintiff learned,  
 20 on the cross-examination of former I.A. Lt. Eglin, that she had identified and  
 21 looked into ***17 uses of force by Banks in a one-year period***, none of which were  
 22 ever disclosed to Plaintiffs.

23 During trial, the extraordinary nature of this case was further demonstrated  
 24 by Defendants' unconscionable violation of the Court's order, ***on Defendants'***  
 25 ***own motion***, to exclude ***all*** witnesses from the courtroom prior to testifying  
 26 (including experts), by providing many of its witnesses with daily trial transcripts  
 27 in advance of their scheduled trial testimony, in a clear attempt to taint that  
 28 testimony to gain a strategic and unfair advantage over Plaintiff at trial.

Finally, the extraordinary nature of this case was highlighted by the equally unprecedeted, outrageous and obvious display by Defendants' trial counsel of her disdain, frustration and disgust of Plaintiff's cross-examination of Defendant Banks, all in full view of the jury, after the Court had previously admonished all parties, their counsel and spectators in the courtroom, not to engage in conduct which the Court described as "a heckler's veto." Exhibit A to Dicks Decl., Trial Transcript, September 21, 2022, 1828:9 – 1832:17.

It is against this backdrop that Plaintiff prays for sanctions in the form of payment of all of his attorney's fees with a 2x multiplier, as well as all expert fees and costs reasonably incurred in the prosecution of his case – a case that was made far more difficult, time-consuming, expensive and risky because of the above abuses.

## **II. PLAINTIFF IS ENTITLED TO FEES AND COSTS UNDER 42 U.S.C. §1988 AND CAL. CIV. CODE §52.1(i) AND RULE 37**

"A party who prevails on a claim under § 1983 is entitled to reasonable attorneys' fees unless special circumstances would render such an award unjust." *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1110 (9th Cir. 2014), citing 42 U.S.C. § 1988(b); *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). A plaintiff prevailing on his or her Section 1983 claim "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Thomas v. City of Tacoma*, 410 F.3d 644, 647 (9th Cir. 2005) (quoting *Hensley*, supra, at 429); see also, *Barnard v. Theobald*, 721 F.3d 1069,1077 (9th Cir.2013) ("a court's discretion to deny fees under § 1988 is very narrow and ... ***fee awards should be the rule rather than the exception.***"). (Emphasis added.)

As repeatedly held by the Supreme Court, the purpose of §1988 is "to ensure that federal rights are adequately enforced." *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010); *Hensley v. Eckerhart*, 461 U.S. 424, 429

1 (1983) (the purpose of 42 U.S.C. §1988 is to ensure effective access to the  
 2 judicial process for persons with civil rights grievances). In light of such public  
 3 policy, courts have consistently held that attorneys in civil rights suits are  
 4 entitled to recover their full fees and costs if they achieve meaningful and  
 5 substantial relief, even if they do not prevail on every theory or against every  
 6 party. *Bouman v. Block*, 940 F.2d 1211, 1237 (9th Cir. 1991); *Hensley*, 461 U.S.  
 7 at 435 (“Litigants in good faith may raise alternative legal grounds for a desired  
 8 outcome, and the court’s rejection of or failure to reach certain grounds is not a  
 9 sufficient reason for reducing a fee. The result is what matters.”). If the rule were  
 10 otherwise, attorneys would be discouraged from taking on high risk cases such as  
 11 this one. *Id.*; see also, *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1499 (9th  
 12 Cir. 1995); *Serrano v. Unruh*, 32 Cal.3d 621 (1982).

13 A fully compensatory fee is one that encourages the vindication of  
 14 constitutional and statutory rights through recovery of ***all costs and time spent***  
 15 ***on this case***, calculated at private market rates.<sup>5</sup> See *City of Riverside v. Rivera*,  
 16 477 U.S. 561, 581 (1986). “The Supreme Court has stated that the lodestar is the  
 17 ‘guiding light’ of its fee-shifting jurisprudence, a standard that is the fundamental  
 18 starting point in determining a reasonable attorney’s fee.” *Van Skike v. Director*,  
 19 *Office of Workers’ Compensation Programs*, 557 F.3d 1041, 1048 (9th  
 20 Cir.2009); *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir.2006) (“In the  
 21 Ninth Circuit, the customary method of determining the permissible amount of  
 22 attorneys’ fees under § 1988 is the ‘lodestar’ method”); see also, *Kelly v.*  
 23 *Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) (the Ninth Circuit employs the  
 24 “lodestar” method to determine a reasonable attorney’s fees award under §  
 25 1988).

26 Under the lodestar calculation, a reasonable fee is the product of “the  
 27

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28 <sup>5</sup> Plaintiff’s cost bill identifies only taxable costs. This motion, as well as the  
 declarations and exhibits thereto, identify, itemize and request payment of ***all***  
 costs reasonably incurred in the prosecution of Plaintiff’s claims.

1 number of hours reasonably expended on the litigation multiplied by a  
 2 reasonable hourly rate.” *Hensley*, 461 U.S. at 433. The prevailing party bears the  
 3 burden of establishing the reasonableness of the attorney’s hourly rates. The  
 4 court has broad discretion in evaluating a fee award because trial judges “are in  
 5 the best position to assess the value of the professional services rendered in their  
 6 courts.” *Christian Research Institute v. Alnor*, 165 Cal.App.4th 1315, 1321  
 7 (Cal.App.2008). As recently explained by the Ninth Circuit in *Kelly*: “The  
 8 lodestar method is a two-step process.” *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115,  
 9 1119 (9th Cir.2000).

10 First, a court calculates the lodestar figure by multiplying the number of  
 11 hours reasonably expended on a case by a reasonable hourly rate. *Id.* A  
 12 reasonable hourly rate is ordinarily the ‘prevailing market rate [] in the relevant  
 13 community.’ [Citation]. The lodestar figure ‘roughly approximates the fee that  
 14 the prevailing attorney would have received if he or she had been representing a  
 15 paying client who was billed by the hour in a comparable case,’ [citation], and is  
 16 therefore a presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729  
 17 F.3d 1196, 1202 (9th Cir.2013). Second, the court determines whether to modify  
 18 the lodestar figure, upward or downward, based on factors not subsumed in the  
 19 lodestar figure. *See Perdue*, 559 U.S. at 553–54, 130 S.Ct. 1662; *Morales v. City*  
 20 *of San Rafael*, 96 F.3d 359, 363–64 & n. 8 (9th Cir.1996), as amended on denial  
 21 of reh’g, 108 F.3d 981(9t h Cir.1997).” *Kelly*, at 1099.

22 In determining the size of an appropriate fee award, the Supreme Court  
 23 has emphasized that courts need not “achieve auditing perfection” or “become  
 24 green eyeshade accountants.” *Fox v. Vice*, 563 U.S. 826, 838 (2011) (“We  
 25 emphasize, as we have before, that the determination of fees ‘should not result in  
 26 a second major litigation.’”). Rather, because the “essential goal of shifting fees  
 27 . . . is to do rough justice,” the court may “use estimates” or “take into account  
 28 [its] overall sense of a suit” to determine a reasonable attorney’s fee. *Id.*

1                   **A. PLAINTIFF IS, UNEQUIVOCALLY, THE PREVAILING PARTY.**

2                   There can be no legitimate dispute that Plaintiff MICKAIL MYLES was  
 3 the prevailing party in this litigation. As to each and every one of his claims as  
 4 against Defendant Banks and Defendant County submitted to the jury, Plaintiff  
 5 secured judgment by a unanimous verdict, including under 42 U.S.C. §1983 and  
 6 California Civil Code §52.1 against Defendant Banks for violation of his federal  
 7 and state constitutional rights when Mr. Myles was beaten and bitten while  
 8 handcuffed, under control and not in any way resisting arrest. Liability as against  
 9 Defendant County was also unanimously established under 42 U.S.C. §1983 as  
 10 applied under *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978),  
 11 for the deliberately indifferent policies and practices it had in place that acted as  
 12 a moving force in the violation of Mr. Myles' Federal constitutional rights by  
 13 Defendant Banks. Liability under §52.1 was similarly established by unanimous  
 14 verdict against Defendant County. Based on the jury's unanimous verdict  
 15 awarding \$5 million, this Court entered an enforceable judgment against  
 16 Defendants and in favor of Plaintiff on October 14, 2022. (Doc. No. 440.) As the  
 17 prevailing party ***on every claim and theory of relief submitted to the jury,***  
 18 Plaintiff is entitled to recover attorney's fees and costs.<sup>6</sup>

19                   **B. LODESTAR CALCULATION – REASONABLE HOURLY RATE.**

20                   Reasonable attorney's fees are assessed at the prevailing market rates in  
 21 the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541,  
 22 79 L.Ed.2d 891 (1984). A reasonable hourly rate is not defined "by reference to  
 23 the rates actually charged by the prevailing party." *Chalmers v. City of Los*  
 24 *Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). Rather, reasonable fees must be  
 25 calculated based on the prevailing market rates charged by "attorneys in the  
 26 relevant community engaged in 'equally complex Federal litigation.'" *Prison*  
 27

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28                   <sup>6</sup> While an extraordinary result, prevailing on every claim and cause of action is  
 not necessary in order to recover all fees and costs. *See, supra*, 5:21 – 6:3.

1     *Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (quoting *Blum*  
 2     *v. Stenson*, 465 U.S. 886, 895 n.11 (1984)); *see also, Van Skike v. Dir., Off. of*  
 3     *Workers' Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009) (“The Supreme  
 4     Court has consistently held that reasonable fees ‘are to be calculated according to  
 5     the prevailing market rates in the relevant community.’”). [A]ffidavits of the  
 6     [applicant’s] attorney[s] and other attorneys regarding prevailing fees in the  
 7     community, and rate determinations in other cases ... are satisfactory evidence of  
 8     the prevailing market rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980  
 9     (9th Cir. 2008); *see also, Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th  
 10     Cir. 2007) (“[B]illing rates should be established by reference to the fees that  
 11     private attorneys of an ability and reputation comparable to that of prevailing  
 12     counsel charge their paying clients for legal work of similar complexity.”) The  
 13     relevant community includes “attorneys practicing in the forum district.” *Gates*  
 14     *v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). Further, “the Court must  
 15     base its determination on the *current* market rate.” *United States v. \$28,000.00 in*  
 16     *U.S. Currency*, 802 F.3d 1100, 1107 (9th Cir. 2015), citing *Camacho*, 523 F.3d  
 17     at 981 (“[A] district court abuses its discretion to the extent it relies on cases  
 18     decided years before the attorneys actually rendered their services.”); *Bell*, 341  
 19     F.3d at 861 (“We hold ... that it was an abuse of discretion in this case to apply  
 20     market rates in effect more than two years before the work was performed.”)

21         Here, Plaintiff has submitted declarations not only from his attorneys  
 22     attesting to the reasonableness of the rates sought, but also declarations from two  
 23     prominent, practicing civil rights attorneys, Carol Sobel and Eugene Iredale, as  
 24     well as from a renowned local attorney with extraordinary experience and  
 25     expertise in prevailing attorney’s fees in the San Diego area, David Casey, Jr. All  
 26     three establish that the requested rates match the prevailing market rates for  
 27     private attorneys with similar levels of experience. *See Guam Soc'y of*  
 28     *Obstetricians and Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996)

1 (“declarations of the ‘prevailing market rate in the relevant community ... [are]  
 2 sufficient to establish the appropriate [billing] rate for lodestar purposes.’”  
 3 (quoting *Davis v. City and County of San Francisco*, 976 F.2d 1536, 1547 (9th  
 4 Cir.1992))).

5 The declarations by Ms. Sobel, Mr. Iredale and Mr. Casey each establish  
 6 that the prevailing hourly community rate for Browne Greene is between \$1,000  
 7 and \$1,200, for Mr. Dicks and Ms. Workman, \$1,000, for Mr. Balaban \$900, for  
 8 Ms. Boyer \$800 and for Mr. Murphy \$700. See Declarations of Carol Sobel  
 9 (“Sobel Decl.” at ¶¶24-35”); Eugene Iredale (“Iredale Decl.” at ¶¶21-24) and  
 10 David S. Casey, Jr. (“Casey Decl.” at ¶¶11-14).

11 The rates requested are further supported by the declarations which  
 12 explain that the relevant community rates here are for plaintiff’s lawyers in  
 13 *complex civil rights cases* in San Diego. See Sobel Decl. ¶¶15-18, Iredale Decl.  
 14 ¶¶20, 25-26 and Casey Decl. ¶8. Both Ms. Sobel and Mr. Iredale highlighted that  
 15 in analyzing rates recovered by lawyers of similar experience in complex civil  
 16 rights cases such as this one, the requested rates are in accord with the current  
 17 prevailing rates. See Sobel Decl. ¶¶20-34 and Iredale Decl. ¶¶18, 20.

18 As outlined in the declarations of Ms. Sobel and Mr. Iredale, the requested  
 19 rates for Plaintiff’s counsel echo those awarded in similar complex civil rights  
 20 actions. See Sobel Decl. ¶¶15-18 and Iredale Decl. ¶¶20, 25-26.; *see also*,  
 21 *Rodriguez v. County of Los Angeles*, No. 10–6342–CBM (AJWx), 96 F.Supp.3d  
 22 1012 (C.D. Cal. 2014) (§1983 action where plaintiff’s counsel was awarded a  
 23 rate of \$975 an hour; the lead attorney, who had been practicing civil rights law  
 24 for 10 years and who had extensive criminal trial experience, a rate of \$775 an  
 25 hour; another attorney who had been practicing law for over 20 years with a  
 26 focus in the area of police misconduct an award of \$700 an hour; an attorney  
 27 with 10 years of experience practicing law a rate of \$600 an hour; an attorney  
 28 with six years of experience \$500 an hour; and paralegal rates of \$295 an hour

1 and law clerk rates of \$175 an hour); *Dowd v. City of Los Angeles*, No. CV 09–  
 2 06731 SS, 28 F.Supp.3d 1019 (C.D. Cal. 2014) (court awarded an attorney with  
 3 a 43-year career \$775 an hour; an attorney with over 35 years practicing law and  
 4 limited civil rights case experience \$675 an hour; an attorney with seven years  
 5 practicing law and limited civil rights and complex litigation experience \$375 an  
 6 hour; and an attorney with one year of legal experience and no experience  
 7 litigating civil rights or other complex federal cases \$200 an hour); *Cervantes v.*  
 8 *Cnty of Los Angeles*, No. 12-09889 DDP (MRWx), 2016 WL 756456, at \*3-4  
 9 (C.D. Cal. Feb. 24, 2016), (court awarded \$700 an hour for lead counsel with  
 10 over 35 years of experience practicing law; \$400 an hour was appropriate for an  
 11 attorney litigating his first federal jury trial and who had limited civil rights  
 12 experience; and \$275 an hour for an attorney approximately two years out of law  
 13 school who was participating in his first federal trial).<sup>7</sup>

14 The evidence therefore supports the rates requested by Plaintiff's counsel.

### 15 **C. LODESTAR CALCULATION – HOURS REASONABLY EXPENDED.**

16 Under the lodestar method, “a district court must start by determining how  
 17 many hours were reasonably expended on the litigation, and then multiply those  
 18 hours by the prevailing local rate for an attorney of the skill required to perform  
 19 the litigation.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.  
 20 2008). As noted by the Ninth Circuit in *Moreno*, as a general rule, “the court  
 21 should defer to the winning lawyer’s professional judgment as to how much time  
 22 he was required to spend on the case.” *Moreno*, 534 F.3d at 1112; *see also, E-*  
*23 Pass Techs., Inc. v. 3Com Corp.*, Civ. No. 00-2255 DLJ, 2007 WL 4170514, at  
 24 \*6 (N.D. Cal. Nov. 14, 2007) (“[T]he court will not second-guess reasonable  
 25 attorney conduct of a litigation strategy for the case.”). Such deference is

26  
 27 <sup>7</sup> *See also*, two recent 42 U.S.C. §1983 cases from the Central District, where  
 28 lead counsel with an outstanding track record, but with far less time at the bar  
 than Mr. Greene, was awarded, on multiple occasions, \$1,100/hour. Exhibit D to  
 Dicks Decl.

1 particularly appropriate in civil rights cases where plaintiffs' attorneys often  
 2 work on a contingency basis and thus have little incentive to expend unnecessary  
 3 hours. *See, e.g., Moreno*, 534 F.3d at 1112 ("It would be the highly unusual civil  
 4 rights case where [a] plaintiff's lawyer engages in churning."); *Blackwell v.*  
 5 *Foley*, 724 F. Supp. 2d 1068, 1080 (N.D. Cal. 2010) ("[I]f anything, an attorney  
 6 working on contingency is less likely to expend unnecessary hours because the  
 7 payoff is too uncertain.").

8 The chart below on page 15 references the hours spent by each attorney.  
 9 Considering these hours in the context of the three phases of how the case  
 10 proceeded, as described in Mr. Dicks' and Mr. Balaban's declarations (*see*  
 11 Dicks Decl. at ¶¶17-37; Balaban Decl. ¶¶ 10-27), i.e. (1) pretrial discovery and  
 12 initial litigation, (2) law and motion, and (3) trial, the hours reflect 3,338 hours  
 13 for Dicks & Workman, 202 hours for Esner, Chang & Boyer, 584 hours for  
 14 Balaban & Spielberger and 420 hours for Greene, Broillet & Wheeler, totaling  
 15 4,550 hours. The hours requested are supported by the submitted billing  
 16 statements and/or, and as detailed in the declarations of Plaintiff's counsel.

17 The analysis of the reasonableness of the hours requested requires the  
 18 Court to determine that the "time spent was reasonably necessary and that its  
 19 counsel made 'a good faith effort to exclude from the fee request hours that are  
 20 excessive, redundant, or otherwise unnecessary.'" *Jordan v. Multnomah County*,  
 21 815 F.2d 1258, 1263 n.8 (9th Cir. 1987) (quoting *Hensley v. Eckerhart*, 461  
 22 U.S. 433, 434 (1983)). As explained in *Hensley*, "Counsel for the prevailing  
 23 party should make a good faith effort to exclude from a fee request hours that  
 24 are excessive, redundant, or otherwise unnecessary, just as a lawyer in private  
 25 practice ethically is obligated to exclude such hours from his fee submission. In  
 26 the private sector, 'billing judgment' is an important component in fee setting.  
 27 It is no less important here. Hours that are not properly billed to one's client  
 28 also are not properly billed to one's adversary pursuant to statutory authority."

1       *Hensley*, 461 U.S. at 434 (internal citations and quotations omitted).

2              The time records and declarations submitted reflect such billing  
 3 judgment. As noted in the declarations of Messrs. Iredale and Casey, the case  
 4 was handled by Dicks & Workman, alone, throughout the entirety of the  
 5 discovery process and most of the law and motion process. They were joined in  
 6 the case by Ms. Boyer and Mr. Murphy to assist in opposing summary  
 7 judgment motions after County Counsel retained not one, but two outside law  
 8 firms. They were later joined by others, including the very well-known and  
 9 esteemed Mr. Greene and the well respected and very talented trial lawyer, Mr.  
 10 Balaban for the trial. “The time by all the lawyers of over 4,550 hours over an  
 11 eight-year period of time and in the face of the extraordinary abuses perpetuated  
 12 by the Defendants and their counsel, represents a very reasonable time for  
 13 taking a case such as this from inception to trial to a jury, in my opinion.”  
 14 Iredale Decl. ¶27; *see also* Casey Decl. at ¶9.

15              As to Ms. Boyer and Mr. Murphy’s time, there was extensive legal  
 16 briefing in this case concerning Defendants’ attempts to have most, if not all, of  
 17 the claims and causes of action dismissed, even while they willfully suppressed a  
 18 treasure trove of incriminating material. While the legal issues raised in these  
 19 motions for summary judgment were significantly complex and required  
 20 extensive research, the preparation of the motions were particularly onerous  
 21 given the County’s multiple discovery abuses which were most thoroughly  
 22 briefed in the closing days before trial by Mr. Dicks and Ms. Workman.

23              Separate from the motions for summary judgment and multiple sanctions  
 24 motions, there were numerous motions in limine and abusively repetitive “pocket  
 25 briefs” filed by the County of San Diego which required opposition. In addition,  
 26 Plaintiff filed a single motion in limine dealing with the pre and prior acts issues  
 27 which Defendants repeatedly, consistently and erroneously attempted to  
 28 convince this Court that Magistrate Major had either gotten wrong, or

1 alternatively, had ruled on in the Defendants' favor. Research and preparation of  
 2 trial briefs, jury instructions, the special verdict form and other such trial  
 3 documents further make up the hours expended by Mr. Dicks, Ms. Workman,  
 4 Ms. Boyer, and Mr. Murphy, as well as Mr. Balaban (discussed below).

5 Mr. Balaban and Mr. Greene were co-lead trial counsel for this case, with  
 6 Mr. Dicks and Ms. Workman actively involved in every phase of the trial, as  
 7 they were with every aspect of the case since its inception. In addition to his  
 8 trial duties, Mr. Balaban handled most trial-related communications with  
 9 defense counsel, and took a leadership role in managing the case, strategy  
 10 development, and preparing the case for trial. At trial, Mr. Balaban handled  
 11 most of the liability witnesses, along with Mr. Dicks and Ms. Workman, and  
 12 was responsible for opening statement and closing argument, along with Mr.  
 13 Greene, who handled the bulk of the damage witnesses and part of the damage  
 14 issues in closing argument. Both Mr. Balaban and Mr. Greene spent significant  
 15 hours preparing for trial and displayed extraordinarily impressive skills in  
 16 executing their individual functions at trial.

17 Plaintiff's claims for violation of §1983 against Defendants Banks and  
 18 the County of San Diego under *Monell* liability, as well as under the Bane Act,  
 19 false imprisonment and negligence, required substantial work and pulled on the  
 20 vast experience of the trial team, experience which, in the case of Mr. Greene,  
 21 is arguably unparalleled and unavailable from any other source.

22 In addition, throughout this case, Plaintiff's counsel attempted to make  
 23 sincere efforts to settle this case short of trial. Prior to associating in co-counsel,  
 24 Mr. Dicks and Ms. Workman handled preparation for and negotiations at a  
 25 private, third mediation and at the Mandatory Settlement Conference in 2016,  
 26 with Mr. Balaban handling preparation for and negotiations at a private  
 27 mediation in June 2022 which all Plaintiff's counsel attended. However, efforts  
 28 to settle the case short of trial were unsuccessful.

1 All of the attorneys have exercised billing judgment in the hours  
 2 submitted, while dedicating themselves to obtaining the best possible result for  
 3 Mr. Myles. Applying the reasonable prevailing rate to each attorney's  
 4 reasonable hours expended provides a total lodestar amount of \$4,496,000 as  
 5 depicted in the chart below. *See also* Iredale and Casey Decl. at ¶¶ 17, and 7,  
 6 respectively, [“Because counsel for Mr. Myles incurred a reasonable amount of  
 7 time litigating this case at reasonable hourly rates, in my opinion Plaintiff's  
 8 requested lodestar of attorneys' fees of \$4,496,000 is reasonable and  
 9 necessary.”]

<b>ATTORNEY</b>	<b>RATE</b>	<b>HOURS SPENT</b>	<b>TOTAL</b>
Browne Greene	\$1,150	420	\$483,000
Daniel Balaban	\$900	584	\$525,600
Joseph Dicks	\$1,000	2,050	\$2,050,000
Linda Workman	\$1,000	1,288	\$1,288,000
Holly Boyer	\$800	86	\$68,800
Shea Murphy	\$700	116	\$81,200
<b>LODESTAR TOTAL:</b>		<b>4,550 hrs.</b>	<b>\$4,496,000</b>

20 Lastly, Plaintiff notes that in addition to the attorney's fees derived from  
 21 legal work performed in preparing and litigating this case to trial, Plaintiff is  
 22 entitled to attorney's fees for their time spent establishing their right to  
 23 attorneys' fees in the amount requested. *See Clark v. City of Los Angeles*, 803  
 24 F.2d 987, 992 (9th Cir. 1986) (“We, like every other court that has considered  
 25 the question, have held that the time spent in establishing entitlement to an  
 26 amount of fees awardable under section 1988 is compensable.”); *see also*,  
 27 *Hernandez v. Kalinowski*, 146 F.3d 196, 199 (3rd Cir. 1998); *Glass v.*  
 28 *Pfeffer*, 849 F.2d 1261, 1266 (10th Cir. 1988); *Hernandez v. George*, 793

1 F.2d 264, 269 (10th Cir. 1986); *Lund v. Affleck*, 587 F.2d 75, 77 (1st Cir.1978)  
 2 (“It would be inconsistent with the purpose of the Fees Act to dilute a fees  
 3 award by refusing to compensate the attorney for the time reasonably spent in  
 4 establishing and negotiating his rightful claim to the fee.”). Plaintiff is also  
 5 entitled to fees for time spent opposing any post-trial motions by Defendants.

6 **D. LODESTAR MULTIPLIER.**

7 As noted above, the lodestar figure is *presumptively reasonable*. See  
 8 *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (“We have established  
 9 a ‘strong presumption’ that the lodestar represents the ‘reasonable’ fee[.]”);  
 10 *Gonzalez*, 729 F.3d at 1202 (“The product of this computation—the  
 11 “lodestar figure”—is a “presumptively reasonable” fee under 42 U.S.C. §  
 12 1988.”). However, “in rare cases, a district court may make upward or  
 13 downward adjustments to the presumptively reasonable lodestar on the basis  
 14 of those factors set out in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–  
 15 70 (9th Cir.1975), that have not been subsumed in the lodestar calculation.”  
 16 *Camacho*, 523 F.3d at 982. Those factors to be considered in making any  
 17 adjustment to the presumptively reasonable lodestar include:

18 (1) the time and labor required, (2) the novelty and difficulty  
 19 of the questions involved, (3) the skill requisite to perform  
 20 the legal service properly, (4) the preclusion of other  
 21 employment by the attorney due to acceptance of the case,  
 22 (5) the customary fee, (6) whether the fee is fixed or  
 23 contingent, (7) time limitations imposed by the client or  
 24 the circumstances, (8) the amount involved and the results  
 25 obtained, (9) the experience, reputation, and ability of  
 the attorneys, (10) the ‘undesirability’ of the case,  
 (11) the nature and length of the professional  
 relationship with the client, and (12) awards in similar  
 cases.

26 *Kerr*, 526 F.2d at 70. See also, *Evon v. Law Offices of Sidney Mickell*, 688  
 27 F.3d 1015, 1033 n. 11 (9th Cir.2012) (quoting *Morales v. City of San Rafael*,  
 28 96 F.3d 359, 363–64 n. 8 (9th Cir.1996); *Ballen*, 466 F.3d at 746 (“After

1 making that computation, courts then assess whether it is necessary to adjust  
 2 the presumptively reasonable lodestar figure on the basis of twelve factors.”).

3 As recognized by the Supreme Court, while the justification for a  
 4 multiplier cannot include the same factors considered in the initial  
 5 determination of the lodestar figure, an award of fees may be adjusted upward  
 6 by a multiplier where, for example, the lodestar figure does not “adequately  
 7 measure the attorney’s true market value, as demonstrated in part during the  
 8 litigation.” *Perdue v. Kenny A. ex rel Winn*, 559 U.S. 542, 554-555 (2010)  
 9 (“[T]here is strong presumption that the lodestar is sufficient; factors subsumed  
 10 in the lodestar calculation cannot be used as a ground for increasing an award  
 11 above the lodestar; and a party seeking fees has the burden of identifying a  
 12 factor that the lodestar does not adequately take into account and proving  
 13 with specificity that an enhanced fee is justified.”); *see also, Kelly v. Wengler*,  
 14 822 F.3d 1085, 1093, 1102-1105 (9th Cir. 2016) (citing *Perdue* and the  
 15 superior attorney performance justification for a fee enhancement, the Ninth  
 16 Circuit affirmed a multiplier of 2.0 and 1.3 to the fees requested by the two  
 17 attorneys respectively that successfully litigated the action).

18 *Kelly* is instructive. There, the Ninth Circuit, affirmed a multiplier of 2.0  
 19 and 1.3 to the fees requested on the grounds that the “superior performance”  
 20 of the attorneys and the “need to attract competent counsel,” factors not  
 21 subsumed in the lodestar figure, justified the enhancement of fees. *Kelly*, 822  
 22 F.3d 1102-1105. With respect to the superior performance, the Ninth Circuit  
 23 explained: “In *Perdue*, the Supreme Court held, although the lodestar figure  
 24 typically subsumes ‘the novelty and complexity of a case’ and ‘the quality of  
 25 an attorney’s performance,’ a court may enhance the lodestar in ‘rare’ and  
 26 ‘exceptional’ circumstances when the lodestar figure does not adequately  
 27 represent counsel’s ***‘superior performance and commitment of resources.’*** 559  
 28 U.S. at 553-54, 130 S.Ct. 1662 (citation omitted).” *Id.* at 1102 (emphasis added).

1       The Ninth Circuit explained that in “civil rights cases, a court may enhance  
 2       the lodestar figure if plaintiff’s counsel demonstrates ***the value of her***  
 3       ***services exceeds what the court determines to be the prevailing market rate***  
 4       ***for otherwise comparable attorneys.*** *Id.* (emphasis added).

5       Highlighting the district court’s finding that the plaintiff’s counsel  
 6       provided ““extraordinary performance yielding extraordinary results,” and that  
 7       “the quality of the work that produced these results [was] underrepresented in  
 8       the hourly fee,” the Ninth Circuit held ‘The district court’s justification for  
 9       enhancing the lodestar figure was supported by specific evidence in the record.  
 10      The court’s statement that Plaintiffs’ counsel labored ‘under extreme time  
 11     pressure and with very limited resources’ was, if anything, an  
 12     “understatement,” noting that counsel had less than a month to conduct  
 13     discovery, review thousands of pages of documents, and engaged in  
 14     “extensive motions practice, writing numerous pre-trial briefs” and yet despite  
 15     such time constrains, “Plaintiffs’ counsel uncovered substantial evidence of  
 16     noncompliance with the settlement agreement” supporting a verdict in favor of  
 17     their clients. *Id.* at 1102-1104.

18      Similar to *Kelly*, the lodestar figure arrived at here does not adequately  
 19     reflect the true market value of the services rendered in this case. Indeed, the  
 20     attorneys with the most hours in this case, Mr. Dicks and Ms. Workman, are  
 21     experienced civil rights attorneys with over 35 years each of litigation and trial  
 22     experience. They bore the brunt of the intense discovery battles and sanctions  
 23     briefing, all under tremendous time pressures due to the impending trial, having  
 24     to litigate both the pre-trial issues raised by the Defendants’ discovery abuses  
 25     and prepare their witnesses and other materials for trial.

26      To top it off, the Defendants’ abuses continued during trial with  
 27     numerous and repetitive “pocket briefs” which attempted to “work around” this  
 28     Court’s prior rulings. Indeed, after bringing the Defendants’ abuses to light, and

1 after the Court's several sanctions orders, the County of San Diego dumped  
 2 hundreds of pages of new and critically important material on Plaintiff's  
 3 counsel from just over a week before the then trial date in July 2022, through  
 4 the first week of trial in September 2022, while the parties were in the jury  
 5 selection mode. Add to that the temerity of bringing two Rule 50 motions  
 6 claiming that Plaintiff was attempting to inject new theories of liability into the  
 7 case (*see, for instance, Exhibit A* to Dicks Decl., Trial Transcript, September  
 8 15, 2022, 617:20 – 619:3), and one can get a close approximation of the added  
 9 stress, pressure and frustration every one of Plaintiff's attorneys endured, in  
 10 having to modify and change direction for the examination of every liability  
 11 witness due to the new documents being uncovered almost daily. *See* Dicks and  
 12 Balaban Decl. at ¶¶24, 40 and 16, respectively.

13 Further, the extraordinary performance by Plaintiff's team of trial  
 14 lawyers, lead by Browne Greene and Daniel Balaban, resulted in a truly  
 15 extraordinary unanimous verdict rarely obtained; that is, findings against the  
 16 County under *Monell* that:

- 17 1. An unlawful official policy, practice or custom of the County was a  
     cause of Myles' injuries;
- 19 2. The County's failure to train was a cause of Myles' injuries; and,
- 20 3. The County ratified the conduct of Banks, causing Myles' injuries.

21 *See Verdict, Doc. No. 439 at II A, B and C.*

22 That the *Monell* claims rarely survive dispositive pre-trial motions to  
 23 dismiss is indisputable. That they end up resulting in unanimous findings *on*  
 24 *every theory submitted to the jury* is practically unheard of. Notwithstanding  
 25 any "respectful disagreement" by the defense of the jury's findings, this rare  
 26 result should ultimately have a long-term, deeply intense and resounding effect  
 27 on how the County does business, conferring an invaluable and immeasurable  
 28 community benefit, supporting a significant enhancement of the basic lodestar

1 in this case.

2 Further supporting the lodestar enhancement is the fact that Plaintiff's  
 3 trial counsel all put significant out-of-pocket expenses into the case, totaling  
 4 over \$520,000, as follows:

5	1. Greene, Broillet & Wheeler:	\$126,480.66
6	2. Balaban & Spielberger:	\$206,815.12
7	3. Dicks & Workman:	<u>\$187,469.37</u>
8	<b>TOTAL:</b>	<b><u>\$520,765.15</u></b>

9 Thus, the dedication to seeking justice was not just demonstrated by the  
 10 devotion of time and effort, but was demonstrated, in addition, by the enormous  
 11 capital investment these attorneys made to a cause in which the outcome was  
 12 anything but certain, particularly in light of the unscrupulous tactics in which  
 13 the County engaged.

14 Thus, just as in *Kelly*, the prevailing market rate for Mr. Greene, Mr.  
 15 Balaban, Mr. Dicks, Ms. Workman, Ms. Boyer and Mr. Murphy, given their  
 16 respective years of experience, fails to fully appreciate the superior experience,  
 17 skill and devotion to the cause applied by these attorneys in this litigation and  
 18 the meaningful and beneficial result obtained *for the client and the community* as  
 19 a result of their success. On this latter point, the Ninth Circuit's position in  
 20 *Kelly* that the 2.0 and 1.3 enhancement was further justified in light of the  
 21 court's finding that "the limited fees available in prisoner civil rights cases,  
 22 without enhancement, are insufficient to induce private attorneys in Idaho to  
 23 accept cases, such as this one, seeking declaratory and injunctive relief" is  
 24 also relevant to the applicability of a multiplier here as, given the difficulty of  
 25 proving *Monell* claims, "an award of fees that does meaningfully compensate  
 26 the attorneys will fail to attract the most competent of counsel." See *Kelly*, at  
 27 1104-1105.

28 While public entities such as sheriff's departments (which, unlike local

1 municipal police departments, are the top law enforcement agencies in each  
 2 county) provide tremendous benefit to the community, such powerful  
 3 institutions can also wield extraordinary abuse and harm if that power goes  
 4 unchecked by those with the rare skills and resources necessary to do so.  
 5 Verdicts such as the instant one hold public entities accountable for their  
 6 unlawful policies. Section 1988, section 52.1(i) and the lodestar multipliers they  
 7 authorize, ensure that competent counsel of the highest quality will chose to  
 8 fight these critically important cases. In a county of approximately 3.3 million  
 9 residents (second only to LA county in population), the potential positive  
 10 impact on the citizenry is incalculable.

11 In light of such considerations not already considered in the lodestar figure  
 12 of \$4,496,000, Plaintiff requests a multiplier of 2.0, bringing the total fees award  
 13 to \$8,992,000. In the two recent cases from the Central District which are  
 14 attached as Exhibit D to the Dicks Decl., the courts therein granted a multiplier  
 15 of 1.5 on each occasion, where the cases did not even involve *Monell* claims, did  
 16 not result in the kinds of findings likely to produce systemic change (i.e. pattern  
 17 and practice, failure to train, ratification) and the plaintiff's counsel did not have  
 18 to deal with the multitude of evils perpetuated by the Defendants and their  
 19 counsel in the present case. *See also, Moore v. Brunner*, 2010 WL 317017, at \*3  
 20 (S.D. Ohio 2010) ("Due to the exceptional results obtained in these cases, the  
 21 Court finds that a multiplier of 1.25 is appropriate. *See Blum v. Stenson*, 465 U.S.  
 22 886, 901, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984) ("in some cases of exceptional  
 23 success an enhanced award may be justified") (quoting *Hensley v. Eckerhart*,  
 24 461 U.S. 424, 435, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983))."); *Gonzales v. City of*  
 25 *San Jose*, 2016 WL 3011791, at \*8-9 (N.D. Cal. 2016) ("The Court agrees with  
 26 Plaintiff that the case was factually complex. Plaintiff asserted constitutional  
 27 violations in the context of an extensive police operation to investigate an alleged  
 28 gang murder in which Plaintiffs son was the chief suspect. The number of

1 officers on the scene when the alleged misconduct occurred was extraordinary,  
 2 necessitating complicated discovery that was only made more difficult by the  
 3 obstacles City threw in Plaintiffs way. The Court also agrees with Plaintiff that  
 4 the contingency-fee arrangement justifies a multiplier, as does the fact that this  
 5 was not an attractive case for attorneys to take. At the same time, the legal issues  
 6 involved should have been relatively standard for lawyers of Plaintiffs counsel's  
 7 experience and expertise. . . . Having granted Plaintiffs counsel's requested fees  
 8 and hours nearly in full, the Court finds that a multiplier of 1.1 is appropriate on  
 9 balance."); *Balia v. Idaho State Board of Correction*, 2016 WL 6762651 (D.  
 10 Idaho 2016) (awarding multipliers similar to those in Kelly due to the attorneys'  
 11 superior performance and the need to attract competent counsel); *Cole v. City of*  
 12 *Memphis*, Tenn., 2015 WL 5076974, at \*9 (W.D. Tenn. 2015) (In a civil rights  
 13 class action where fees were requested under Section 1988, the court held that in  
 14 light of the results obtained, a 1.15 multiplier was warranted; "In light of the  
 15 injunctive relief prohibiting the Beale Street Sweep and requiring additional  
 16 training of police officers to be more aware of an individual's constitutional  
 17 rights, the results achieved by Plaintiffs' counsel go beyond the interests of the  
 18 parties in the instant case. For these reasons, the Court finds it appropriate to  
 19 award Plaintiffs' counsel a 15% enhancement (1.15 multiplier).").

20 Therefore, a 2.0 enhancement is justified in this case, where the legal and  
 21 factual issues, time and capital invested, as well as the result, were anything but  
 22 standard, particularly given Defendants' documented abuses, discovery and  
 23 otherwise.

24 **E. PLAINTIFF IS FURTHER ENTITLED TO HIS REASONABLE OUT-**  
 25 **OF-POCKET LITIGATION COSTS AS RECOVERABLE UNDER 42**  
 26 **U.S.C. § 1988 AND CIVIL CODE SECTION 52.1(i).**

27 Further, it is well established that attorney's fees under 42 U.S.C.  
 28 §1988 and §52.1(i) include reasonable out-of-pocket litigation expenses that

would normally be charged to a fee-paying client, even if the court cannot tax these expenses as “costs” under 28 U.S.C. § 1920. *Trustees of Const Industry and Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253 (9th Cir. 2006). Therefore, Plaintiff is entitled to recover for reasonable out-pocket-expenses incurred in this litigation. These are expenses that a client would normally pay but which were not taxed as costs; they are, therefore, compensable under 42 U.S.C. §1988.

Plaintiff’s out-of-pocket expenses included the cost of retaining expert witnesses, Jeffrey Noble, Dr. Monte Buchsbaum, Dr. Clark Clipson, Dr. Robert Hall, Gregory Kaseno, and Dr. Scott Matthews. Plaintiff incurred total expert witness expenses as set forth in the Declarations of Messrs. Dicks and Balaban and the exhibits thereto. In addition, Plaintiff incurred travel, hotel and meal expenses due to the fact that Plaintiff and his family had to travel from Washington D.C. (where they moved after the incident), and because Mr. Balaban and Mr. Greene both reside in Los Angeles,<sup>8</sup> as well as other reasonable and necessary costs as set forth more specifically in said declarations and their exhibits. Accordingly, Plaintiff respectfully requests an award of expenses in the total amount of \$520,765.15, as set forth above.

**F. PLAINTIFF IS ENTITLED TO SANCTIONS IN THE AMOUNT OF  
\$9,512,765.15, REPRESENTING ALL FEES AND COSTS  
REQUESTED HEREIN.**

Under Federal Rule of Civil Procedure Rule 37, a failure to propound responses to discovery requests may warrant the imposition of a wide range of

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<sup>8</sup> Two of the four counsel for Plaintiff reside outside San Diego County, while three of the four counsel for the Defendants reside outside San Diego County, one traveling from New York to attend trial.

1 sanctions.<sup>9</sup> The court may even impose terminating sanctions where the failure to  
 2 respond to discovery requests is willful or bad faith unwillingness. *See Sanchez*  
 3 *v. Rodriguez* (C.D. Cal. 2014) 298 F.R.D. 460, 463. Willfulness and bad faith  
 4 “does not require wrongful intent; rather, disobedient conduct not shown to be  
 5 outside the party's control is by itself sufficient to establish willfulness, bad faith,  
 6 or fault. ....(quoting *Jorgensen*, 320 F.3d at 912, and citing *Henry*, 983 F.2d at  
 7 948); *see also, Hyde & Drath v. Baker*, 24 F.3d 1162, 1167 (9th Cir.1994) (citing  
 8 *Henry*, 983 F.2d at 948).” *Id.* at 463.

9 Here, the Court, exercising tremendous patience and judicial restraint,  
 10 opted for sanctions less severe than terminating sanctions, while reserving the  
 11 imposition of additional sanctions depending on the presentation of the  
 12 evidence. Given the nature of the evidence adduced, the additional documents  
 13 that the Court and Plaintiff learned were continuing to be withheld wrongfully  
 14 and willfully by the Defendants, and given that Plaintiff will therefore never  
 15 know the nature and extent of the deceit perpetuated against him by the County  
 16 or the effect that deceit had on his verdict, the Court should award Plaintiff all  
 17 of his attorney's fees, the requested 2.0 multiplier, plus all costs.

18 Finally, and as noted in prior briefings by Plaintiff, in addition to  
 19 finding willfulness, bad faith, or fault, before more severe sanctions may be  
 20 ordered per Rule 37, “a court must consider and weigh the following five  
 21 factors: (1) the public interest in expeditious resolution of litigation; (2) the  
 22 court's need to manage its dockets; (3) the risk of prejudice to the party seeking  
 23 sanctions; (4) the public policy favoring disposition of cases on the merits; and  
 24 (5) the availability of less drastic sanctions. *See, e.g., Connecticut General v.*  
 25 *New Images*, 482 F.3d 1091, 1096 (2007); *Henry*, 983 F.2d at 948.” *Sanchez*,

26  
 27 <sup>9</sup> This Court may also issue sanctions under FRCP 11, given the  
 28 misrepresentations in Doc. Nos. 72-3 and 193, regarding the authenticity  
 objections to the Valdez IA material and refusal to acknowledge and defense of  
 same in the course of the sanctions motion.

1 298 F.R.D. at 469–470; *see Valley Eng'rs, Inc. v. Elec. Eng'g Co.*, 158 F.3d  
 2 1051, 1057 (9th Cir.1998).

3 Here, all the factors weigh heavily in favor of the additional sanctions  
 4 Plaintiff prays for herein. *See Sanchez*, 298 F.R.D. at 472-473. Broadly speaking,  
 5 Defendants’ ongoing unwillingness to meet its discovery requirements has  
 6 immutably compromised Plaintiff’s ability to fully avail himself of the rights he  
 7 has been granted under law. Indeed, beyond the copious resources (including  
 8 judicial resources) that have been squandered as a result of Defendants’ cover-up  
 9 practices, it is now no longer possible for Plaintiff to know the full extent of the  
 10 prejudice he has suffered. The net effect on Plaintiff of having been denied the  
 11 discovery and additional discovery opportunities that resulted from Defendant  
 12 County’s repeated and willful suppression of evidence justifies the relief herein  
 13 sought. *See Hyde & Drath v. Baker*, 24 F.3d 1162, 1166- 1167 (9<sup>th</sup> Cir. 1994),  
 14 citing *United States ex rel. Wiltec Guam. Inc. v. Kahaluu Const. Co.*, 857 F.2d  
 15 600, 604 (9<sup>th</sup> Cir. 1988.) In addition, Plaintiff refers this Court to *Chambers v.*  
 16 *Nasco, Inc.*, 501 U.S. 32 (1991) and *Goodyear Tire & Rubber Co. v Haeger*, 137  
 17 S. Ct. 1178 (2017) authorizing payment of all attorney’s fees as a sanction when  
 18 the discovery abuses *taint the entire litigation*, exactly what has happened in the  
 19 present case, especially given their spanning a period of over six years.

### 20 III. CONCLUSION

21 For the foregoing reasons, Plaintiff respectfully requests that the Court  
 22 award attorney’s fees in the amount of \$8,992,000 (lodestar figure of  
 23 \$4,496,000, with a 2.0x multiplier added to that sum). Plaintiff also requests  
 24 that the Court award expenses in the amount of \$520,765.15 for a total of  
 25 \$9,512,765.15. Finally, Plaintiff requests that the Court award him attorney’s  
 26 fees for work performed in the preparation and litigation of the instant motion for  
 27 attorney’s fees, including all time not accounted for in these papers and for the  
 28 time after these papers are filed, as will be stated in the reply papers.

1 Dated: November 14, 2022  
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DICKS & WORKMAN  
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3  
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